IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.906 OF 1989

(1) The Union of India(Through the Secretary, Ministry of Defence, New Delhi.);

(2) The Deputy Director, Military Lands and Cantonments, Southern Comand, Poon;

(3) Military Estate Officer, Bombay Gujrat Circle, P/17-B1 Lines, Colaba,Bombay-5. ... Appellants.

V/s.

The Trustees of the Port of Bombay a body corporate constituted under the Bombay Port Trust Act, 1879 and have their Office at Nicol Road Ballard Estate, Bombay-1 ... Respondent.

Mrs. G.P.Mulekar, AGP for Appellants.

Mr. U.J.Makhija i/b M/s. Mulla & Mulla & CBC for Respondent.

Coram: Smt.Nishita Mhatre, J.
Dated: 14th October, 2004.

P.C.:-

1. This appeal impugns the Judgment and order of the Trial Court dated 20th March, 1986 decreeing the suit for possession and mesne profit filed by the Respondent. In November 1943, the respondent let out a plot of land at Ballard Estate, Mumbai to the appellant No.2, acting on behalf of the appellant No.1. The monthly tenancy commenced from 1st November, 1943 and the rent fixed was Rs.98.87 per month on the usual terms and conditions. The suit premises was let out to the appellants for use

as a godown for storage of non-hazardous goods. The appellants were also permitted to construct an underground petrol tank. It appears that on 5th August, 1968, the respondent terminated the tenancy and called upon the appellants to quit and vacate the premises on the expiry of the month. Without prejudice to their letter terminating tenancy, the respondent offered the appellants to continue the tenancy of the suit premises, if the appellants agreed to pay an enhanced rent of Rs.173.02 ps. per month instead of the earlier rent. The Appellants did not either pay the enhanced rent or vacate the premises. By another notice of 11th July, 1973, the respondents terminated the tenancy again and called upon the appellants to hand over vacant possession of the suit premises. The respondent also claimed arrears of rent at the enhanced rate amounting to Rs.5,603.97ps. Since the appellant did not comply with either of the requirements of the respondent, the respondent filed Suit No.9486 of 1973 for possession of the suit premises and mesne profit. The trial court after recording evidence, decreed the suit and directed the appellants to pay arrears of Rs.5,041.86 upto March, 1986 and future compensation at the rate of Rs.173.02 per month till the date of handing over vacant and peaceful possession of the suit premises to the respondent.

2. Mr. U.J.Makhija, the learned counsel appearing

for the respondent states that the appellants have already handed over the possession of the suit premises on 5th February, 2003. He produces xerox copies of the surrender certificate & release certificate which are marked 'X-1 and X-2' respectively for identification. Therefore, the question of appeal being considered on the issue of possession does not arise.

3. Mrs. Mulekar, the learned AGP urges that the question of compensation to be paid to the respondent will have to be decided in the appeal. However, in grounds of appeal, there is no mention or challenge to the compensation directed to be paid by the Trial Court. Therefore, the decree is confirmed. The appellants will pay the compensation as fixed by the trial court. Any amounts paid by them during the pendency of the suit and the present appeal will be adjusted while making payment of the compensation. Appeal dismissed. No order as to cost.

....